

**COMMONWEALTH OF KENTUCKY
NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
FILE NO. AAO-26076-039**

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET

PLAINTIFF

VS.

**HEARING OFFICER'S REPORT
AND RECOMMENDED SECRETARY'S ORDER**

JIMMY HALE

DEFENDANT

* * * * *

THIS MATTER came before the undersigned Hearing Officer for an administrative hearing on March 7, 2003, to allow the Defendant, Mr. Jimmy Hale, an opportunity to contest the Secretary's February 25, 2003 Order For Discontinuance, Abatement Or Alleviation. The Hon. John West appeared on behalf of the Cabinet; the Defendant, Mr. Jimmy Hale, appeared on his own behalf without counsel; and Ms. Cathleen Adams, with the Cabinet's Division of Water, appeared as the Cabinet's client representative.

After hearing the parties evidence and arguments, the Hearing Officer ruled, on the record, that the Secretary's February 25, 2003 Order should be affirmed in its entirety and further ordered the Defendant Jimmy Hale to perform specified remedial actions which the Hearing Officer found were necessary to effectuate the Secretary's Order and to avoid a further catastrophic release of wastewater/manure into the waters of the Commonwealth from Mr. Hale's waste lagoons, which lagoons resulted from Mr. Hale's previous dairy operations at the site.

To formalize his earlier ruling, the Hearing Officer entered an Order on March 10, 2003. A copy of this Order Affirming Secretary's Abate and Alleviate Order is attached and incorporated into this Recommendation.

This report and recommendation to the Secretary is being made pursuant to 401 KAR 100:010 Section 3(5), to allow the parties an opportunity to file any exceptions to the Hearing Officer's ruling resulting from the hearing, and to allow the Secretary to further review this matter after hearing. See 401 KAR 100:010 Section 14 (Procedures for Abate or Alleviate Orders), which in subsection (4) references back to Section 3 of this regulation to establish hearing procedures.

However, as the Hearing Officer fully affirmed the Secretary's February 25, 2003 Order following hearing,¹ the parties are hereby advised that the Secretary's February 25, 2003 Order remains fully in effect and will remain so notwithstanding any exceptions which may be filed in response to this report and recommendation. Thus, the Defendant Jimmy Hale remains obligated to fully comply with the necessary remedial measures to fully comply and effectuate the Secretary's February 25, 2003 Order, unless and until, said Order is modified by the Secretary.

Based upon the foregoing, the undersigned Hearing Officer recommends that the Secretary enter the attached recommended Order, which fully affirms the Secretary's February 25, 2003 Order and further orders the Defendant Jimmy Hale to comply with the specified remedial measures filed into the record on March 7, 2003, and which remedials are necessary to effectuate the prior Secretary's Order .

So RECOMMENDED this _____ day of _____, 20____.

//s// [3/19/03]
STEVE BLANTON, HEARING OFFICER
OFFICE OF ADMINISTRATIVE HEARINGS
35-36 FOUNTAIN PLACE
FRANKFORT, KENTUCKY 40601
(502) 564-7312

EXCEPTION RIGHTS

Pursuant to KRS 224.10-440, any party may file exceptions to this Report and Recommendation within fourteen (14) days of receipt of this Report. The Secretary will then consider this Report, any Exceptions, and the recommended Order and decide this case.

¹ The regulation gives the Hearing Officer the authority to terminate or stay the Secretary's Order after hearing provided he finds on the record that said order is "improper or inappropriate" or its "obligations have been met." See 401 KAR 100:010 Section 14(1).

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was, on this _____ day of _____, 200_, mailed by first-class mail, postage prepaid to:

JIMMY HALE
ROUTE 1
KIRKSEY KY 42054

and hand-delivered to:

Hon. JOHN WEST
Natural Resources and
Environmental Protection Cabinet
Office of Legal Services
Fifth Floor, Capital Plaza Tower
Frankfort, KY 40601

DOCKET COORDINATOR

Distribution:

Hon. Paul E. Patton, Governor
DOW
Hearing Officer
LTS

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meg: 3/17/03

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NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
FILE NO. AAO-26076-039**

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET

PLAINTIFF

VS.

SECRETARY'S ORDER

JIMMY HALE

DEFENDANT

* * * * *

THIS MATTER is before the Secretary upon the Report and Recommended Order of Hearing Officer, Steve Blanton. Having considered said Report and Recommendations and any exceptions thereto, and being otherwise fully and sufficiently advised:

IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. The Hearing Officer's Report and Recommendation entered in the record on __[3/19/03]____, 2003, is ADOPTED and incorporated herein by reference. The Secretary further ADOPTS and incorporates herein by reference the Hearing Officer's March 10, 2003 Order and the "Hale Dairy Remedials" attached thereto.

2. The Secretary's prior February 25, 2003 Order For Discontinuance, Abatement Or Alleviation; and the Hearing Officer's March 10, 2003 Order are fully **AFFIRMED**.

3. The Defendant, Jimmy Hale, shall immediately comply with the above described Orders and the specified remedial actions ordered herein. This includes the "Hale Dairy Remedials" specified above.

4. This is a Final and Appealable Order.

So ENTERED this _____ day of _____, 2003.

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET

_____/s//[4/18/03]_____
HENRY C. LIST, SECRETARY

APPEAL RIGHTS

In accordance with the provisions of KRS 224.10-470 and KRS 151.186, appeals may be taken from Final Orders of the Cabinet by filing in Circuit Court a Petition for Review. Such Petition must be filed within thirty (30) days from the entry of the Final Order, and a copy of the Petition must be served upon the Cabinet.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Final Secretary's Order was, on this _____ day of _____, 200_, mailed by first-class mail, postage prepaid to:

JIMMY HALE
ROUTE 1
KIRKSEY KY 42054

and hand-delivered to:

Hon. JOHN WEST
Natural Resources and
Environmental Protection Cabinet
Office of Legal Services
Fifth Floor, Capital Plaza Tower
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